

FILED

APR - 9 2008

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIAUNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA
SACRAMENTO DIVISION

In re) No. 07-29814-A-7
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 DOROTHY MARIE KIMBALL,)
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 Debtor.)
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MEMORANDUM

The debtor has filed an ex parte motion to reopen her chapter 7 case for the purpose of amending her schedules to list a previously omitted unsecured creditor to the schedules.

The petition was filed on November 16, 2007. The notice of the meeting of creditors informed the creditors whether this was a "no-asset" case. Accordingly, creditors were instructed to not file proofs of claim.

The trustee ultimately filed a report of "no distribution," meaning that he had located no nonexempt assets that could be liquidated for the benefit of creditors and accordingly no dividend would be paid to creditors. The trustee's report was approved without objection.

Thus, this case was a "no-asset, no-bar-date-case." Creditors holding claims otherwise dischargeable by the debtor had their claims discharged even though their claims were not scheduled and even though the omitted creditor had no notice of the case. 11 U.S.C. § 727(b); Beezley v. California Land Title

1 Co. (In re Beezley), 994 F.2d 1433 (9th Cir. 1993); White v.
2 Nielsen (In re Nielsen), 383 F.3d 922, 925 (9th Cir. 2004). It
3 is not necessary to reopen the case and amend the schedules in
4 order to discharge the claims of the omitted creditor.

5 If the omitted creditor's claim could have been excepted
6 from discharge by 11 U.S.C. § 523(a)(2), (a)(4), or (a)(6), the
7 debtor's failure to schedule the claim when the petition was
8 filed meant that the omitted creditor did not receive notice of
9 the deadline for filing a complaint. See 11 U.S.C. § 523(c);
10 Fed. R. Bankr. P. 4007(b). Therefore, unless the omitted
11 creditor had actual knowledge that the petition had been filed in
12 time to file a timely dischargeability complaint, the failure to
13 initially schedule the claim may mean it is nondischargeable. 11
14 U.S.C. § 523(a)(3)(B). Amending the schedules, however, will
15 have no impact on the issue.

16 In short, merely reopening the case to permit the amendment
17 of the schedules will have no effect whatever. The debtor does
18 not need to do amend the schedules -- if the claim of the omitted
19 creditor was otherwise dischargeable by a chapter 7 discharge, it
20 was discharged even though the creditor and its claim was omitted
21 from the schedules.

22 If the omitted creditor of the debtor wants a declaration
23 that the claim is or is not made nondischargeable by section
24 523(a)(3)(B), one of them must file an adversary proceeding. See
25 In re Costa, 172 B.R. 954 (Bankr. E.D. Cal. 1994).

26 In connection with the resolution of any such adversary
27 proceeding, two questions must be determined. Did the omitted
28 creditor have actual notice of the bankruptcy filing in

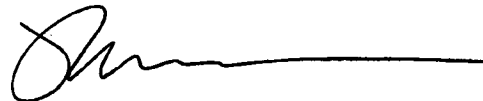
1 sufficient time to file a timely dischargeability complaint? See
 2 Fed.R.Bankr.P. 4007(c). And, if there was no actual notice of
 3 the petition, is its claim nondischargeable under 11 U.S.C. §
 4 523(a)(2), (a)(4), or (a)(6)?¹ If the omitted creditor had
 5 actual notice, or if its claim is not excepted from discharge by
 6 11 U.S.C. § 523(a)(2), (a)(4), or (a)(6), the court will declare
 7 that the omitted claim was discharged.

8 However, whichever declaration is appropriate, it can be
 9 given only in an adversary proceeding.

10 Therefore, the court will permit this case to be reopened,
 11 but the court will not issue an unequivocal declaration that the
 12 omitted claim was discharged in bankruptcy. Because this was a
 13 "no-asset, no bar date" case, the unscheduled claim of the
 14 omitted creditor was discharged unless it is made
 15 nondischargeable under sections 523(a)(3)(B). To obtain a
 16 declaration that an omitted claim is not made nondischargeable by
 17 section 523(a)(3)(B), the debtor (or the omitted creditor) must
 18 file, serve, and prevail in an adversary proceeding.

19 Dated: *9 April 2008*

By the Court

20 

21 Michael S. McManus, Chief Judge
 22 United States Bankruptcy Court

23 _____
 24 ¹ If the omitted creditor is claiming the debts are non-
 25 dischargeable under 11 U.S.C. § 523(a)(1), (5), (7)-(15), (16),
 26 (17), the creditors cannot be prejudiced by the omission of their
 27 claim in a "no asset" case. Unlike section 523(a)(2), (4) or (6),
 28 there is no deadline for the filing of such dischargeability
 complaints and nonbankruptcy courts may determine whether the
 debts fall into the exceptions enumerated in section 523(a)(1),
 (5), (7)-(15), (16), (17). 11 U.S.C. § 523(c)(1); Fed.R.Bankr.P.
 4007(c).

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

CERTIFICATE OF MAILING

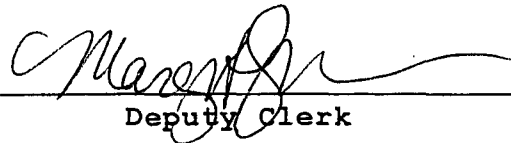
The undersigned deputy clerk in the office of the United States Bankruptcy Court for the Eastern District of California hereby certifies that a copy of the document to which this certificate is attached was mailed today to the following entities listed at the address shown on the attached list or shown below.

see attached

DATED:

4/10/08

By:



Deputy Clerk

Chinonye Ugorji
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